

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Rollie Bredeson,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1180
Parcel No. 171/00369-173-406

On April 12, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Rollie Bredeson, a local real estate professional, filed the appeal on behalf of Orlan and Lori Rustan and represented them at hearing. Assistant County Attorney Ralph Marasco, Jr., represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Orlan and Lori Rustan are the owners of property located at 1005 10th Avenue Place SE, Altoona, Iowa. The real estate was classified residential on the January 1, 2011, assessment. It was valued at \$188,900, representing \$33,200 in land value and \$155,700 in improvement value. The Rustans protested the assessment to the Polk County Board of Review on the grounds that 1) the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); 2) the property was assessed for more than the value authorized by law under section 441.37(1)(a)(2), asserting the correct value was \$148,000; 3) there was an error in the assessment under section 441.37(1)(a)(4); and 4) there was a change downward in the value since the last assessment under sections 441.37(1)(a)(5). Their error statement essentially asserted the property

was over-assessed. Additionally, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). The Board of Review denied the protest.

Rollie Bredeson then filed an appeal to this Board on the Rustans' behalf, reasserting their claims. We note the gist of their claim is that the property is over assessed based on the testimony and evidence offered at hearing; therefore, we do not address the issue of inequity.

According to the property record card, the subject property is a one-story, frame home built in 2004. It has 1507 square feet of above-grade living area, a full, unfinished basement, a 100 square-foot deck, and a 36 square-foot open porch. The subject site is 0.228-acres.

The Rustans main argument is that the subject property is assessed for more than authorized by law. Bredeson explained the Rustans purchased the property as the result of a foreclosure in June 2010. The subject property was originally listed for \$115,000, but the final purchase price was \$148,000. Bredeson stated there was significant interest in the property and the Rustans really wanted it; therefore, they were willing to make an offer in excess of the list price. Bredeson believes this fact supports the conclusion that the purchase price should be the assessed value. We note that in arriving at market value, sale prices or property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors that distort market value under Iowa Code section 441.21(1)(b). This sale was the result of a foreclosure. Even though it sold for well above the list price, there is not sufficient evidence to rely on the purchase price as the sole determining factor of the property's fair market value.

Bredeson also noted the property had mold problems; however, it appears this problem was remediated prior to the January 1, 2011, assessment.

The Board of Review did not provide any new evidence. It relied on the Certified Record, which included an Appraiser's Analysis that considered five comparable sales of one-story homes.

The sales occurred between February and December 2010 for \$172,000 to \$255,000. After adjustments, the values range from roughly \$178,800 to \$204,000. While this analysis shows Rustans' property falls within the range of adjusted sales, we decline to rely on it because the adjustments were based exclusively on cost.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

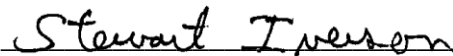
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Rustans did not provide any evidence of the market value of the subject property using sales. Instead, they assert the correct fair market value of the property should be the purchase price of \$148,000, in June 2010. However, we think it is clear from the wording of section 441.21(1)(b) that a sales price for the subject property in a normal transaction just as sales prices of a comparable property is a matter to be considered in arriving at market value but does not conclusively establish that value. *Riley v. Iowa City Board of Review*, 549 N.W.2d 289, 290 (Iowa 1996). Furthermore, a sales price in an abnormal transaction is not to be taken into account unless the distorting factors can be clearly accounted for. § 441.21(1)(b)(1). Therefore, we find the Rustans have failed to support their claim that the subject property is over assessed.

THE APPEAL BOARD ORDERS the assessment of Orlan and Lori Rustan's property located at 1005 10th Avenue Place SE, Altoona, Iowa, of \$188,900 as of January 1, 2011, as set by the Polk County Board of Review is affirmed.

Dated this 6th day of May 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>May 6, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	